

**STATE OF NEW MEXICO  
BEFORE THE WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF:  
PROPOSED AMENDMENTS TO  
STANDARDS FOR INTERSTATE AND  
INTRASTATE SURFACE WATERS,  
20.6.4 NMAC**

**No. WQCC 20-51 (R)**

**TRIAD NATIONAL SECURITY, LLC  
AND THE UNITED STATES DEPARTMENT OF ENERGY'S  
SUMMARY OF ISSUES SUBJECT TO AMIGOS BRAVOS' MOTIONS TO STRIKE**

Triad National Security, LLC and the United States Department of Energy, National Nuclear Security Administration (collectively "LANL"), as requested by the Hearing Officer's at the December 30, 2021 hearing on Amigos Bravos' motions to strike, hereby submit the following one paragraph summaries of the issues subject to the two motions to strike.

**Summary of Issues Associated with Amigos Bravos' First Motion to Strike**

Amigos Bravos' first Motion to Strike requested that the Hearing Officer strike LANL's final proposed amendments to 20.6.4.14(A) NMAC and a reference to EPA regulation 40 C.F.R. § 122.44(i)(1)(iv) in LANL's Proposed Statement of Reasons, arguing that there is no evidence in the record to support LANL's final proposed amendments. Citing to LANL's Proposed Statement of Reasons at Paragraph 46 and to 40 C.F.R. § 122.44, LANL responded that its final proposed amendments to 20.6.4.14(A) NMAC further conformed the rule to federal regulations and that the testimony during the hearing made clear that the purpose of LANL's original proposed revisions was to conform the WQCC's requirements for the use of analytical methods for compliance purposes, including state 401 certifications of federal permits, to federal law.<sup>1</sup> LANL also objected to the first Motion to Strike on several procedural grounds, including that the Motion is without

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<sup>1</sup> 40 C.F.R. §122.44(i)(1)(iv)(B) provides "In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136 . . . monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters."

legal authority. LANL also separately filed LANL's Second Notice of Errata, addressing Amigos Bravos' allegations that an EPA regulation was misquoted on page 111 of LANL's Proposed Statement of Reasons.<sup>2</sup> At the December 30, 2021 hearing, Amigos Bravos' expressed disagreement with LANL's characterization of the evidence in the record in support of LANL's final proposed amendments to 20.6.4.14(A) NMAC. During the hearing, the Hearing Officer requested that LANL provide further, specific record citations in support of LANL's final proposed amendments to 20.6.4.14(A) NMAC. LANL filed the requested additional citations on January 5, 2022 in its Notice Of Compilation Of Evidence.

### **Summary of Issues Associated with Amigos Bravos' Second Motion to Strike**

Amigos Bravos' second Motion to Strike requested that the Hearing Officer strike LANL's final proposed language amending 20.6.4.7.T(2) NMAC (definition of "toxic pollutant"), arguing that there is no evidence in the record to support LANL's final proposed amendment. Citing to various portions of the record (including testimony of Dr. Dail, *see* LANL Ex. 5 at 8 (Dail Direct); LANL Ex. 1 (Proposed Changes); Hrg. Tr., Vol. II, 505:19-506:1 (Dail); Hrg. Tr. Vol. 2 at 518:10-13 (Dail); Hrg. Tr. Vol. 2 at 535:17-25 (Judd); *see also* Hrg. Tr. Vol 2 at 588:4-6 (De Rose-Bamman)), LANL argued that specifically listing constituents that are considered toxic pollutants was an attempt at reaching compromise on the various proposals submitted by parties, is necessary to cure the due process problem with the existing definition, and is consistent with 40 C.F.R. § 131.3(d) and the Commission's approach to regulating toxic pollutants in the groundwater regulations, 20.6.2 NMAC. LANL also objected to the second Motion to Strike on several procedural grounds, including that the Motion is without legal authority. At the December 30,

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<sup>2</sup> LANL did not include "or required under 40 CFR chapter I, subchapter N or O" because Subchapter N refers to effluent guidelines and standards and Subchapter O refers to requirements for sewage sludge, not water quality standards or compliance with water quality standards under Section 401 of the federal Clean Water Act and these have not been adopted by the WQCC.

2021 hearing, Amigos Bravos' expressed disagreement with LANL's characterization of the evidence in the record in support of LANL's final proposed amendments to 20.6.4.7.T(2) NMAC. The Hearing Officer agreed that there was evidence in the record to support LANL's final proposed amendments to 20.6.4.7.T(2) NMAC and requested that LANL provide further, specific record citations in support of LANL's final proposed amendments to 20.6.4.7.T(2) NMAC. LANL filed the requested additional citations on January 5, 2022 in its Notice Of Compilation Of Evidence.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on January 5, 2022, a true and correct copy of the foregoing *Triad National Security, LLC and the United States Department of Energy's Summary of Issues Subject to Amigos Bravos' Motions to Strike* was served via electronic mail to the following:

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